IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 46 of 2003

with

CRIMINAL MISC.APPLICATION No 4399 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RAVAJIBHAI TAPUBHAI SHIYAL

Appearance:

1. Criminal Appeal No. 46 of 2003

Mr RC Kodekar, A.PUBLIC PROSECUTOR for Appellant No.

MR YN RAVANI for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 19/04/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

The State of Gujarat has preferred this appeal to challenge the judgment and order of acquittal passed by the learned Addl.Sessions and Fast Track Judge, Amreli in Sessions Case No.14 of 2000 datted 19.9.2002. The respondents in that case were prosecuted for the alleged commission of offence punishable under Section 302 read with section 34 of Indian Penal Code.

2. According to the prosecution, the deceased, on the date of the incident, was collecting dry wood for fuel and some of it fell in the field of one Tapubhai. Tapubhai's three nephews i.e. the present respondents got enraged and they assaulted the deceased with stick and pipe. As a result of that he fell down on the ground. When he was shifted to Rajula Hospital wherein the Doctor declared him dead.

3. At the trial, the prosecution examined one Bababen who is the daughter of the deceased. According to her, she was present when the incident took place. In the evidence, she was however, not able to state before the Court as to what weapons were carried by the respondents and who assaulted the deceased with which weapon. She has stated that she herself had thrown herself on her father with a view to save him and in the process she had also sustained injury. However, no medical certificate has been produced by the prosecution. It is also obvious that when she had thrown herself on her father who was in injured condition, her clothes ought to have been stained with blood but that has not happened. All these factors have been taken into consideration by the trial court and they have been adequately discussed in para 20 of the judgment. The another eye witness-Kamuben has not been examined by the prosecution. So far as the dying declaration which is in the form of revelation made to the wife by the deceased that it was the respondents who had assaulted him, it is not reliable. Diwaliben, the widow of the deceased has stated in her evidence that the deceased had not disclosed her anything. These factors created serious doubt regarding the prosecution case. The learned Judge, has, therefore, drawn the conclusion that the prosecution has not been able to prove its case against the respondents beyond any reasonable doubt. Having carefully perused the judgment and the relevant portion

of the judgment discussed above, we are in total agreement with the conclusion drawn by the trial court. In view of the same, even prima facie, we are of the opinion that there is no merit in the appeal and no purpose would be served by admitting this appeal to final hearing. Hence this appeal is dismissed in limine.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

msp